

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 17-1815V
(not to be published)

PATRICIA STOLBERG, *as Personal*
Representative of the Estate of Peter Stolberg,
Decedent,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Filed: July 14, 2021

Decision by Stipulation; Damages;
Influenza (“flu”) Vaccine; Transverse
Myelitis (“TM”).

Anne C. Toale, Maglio, Christopher, and Toale, Sarasota FL., for Petitioner
Voris E. Johnson, U.S. Department of Justice, Washington, DC, for Respondent

DECISION ON JOINT STIPULATION¹

On November 20, 2017, Patricia Stolberg (“Petitioner”) filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Vaccine Program”) on behalf of the Estate of Peter Stolberg.² Pet., ECF No. 1. Petitioner alleges that as a result of the influenza vaccine he received on October 5, 2016, Mr. Stolberg developed Transverse Myelitis

¹ Although this Decision has been formally designated “not to be published,” it will nevertheless be posted on the Court of Federal Claims’ website in accordance with the E-Government Act of 2002, 44 U.S.C. § 3501 (2012). **This means the Decision will be available to anyone with access to the internet.** As provided by 42 U.S.C. § 300aa-12(d)(4)(B), however, the parties may object to the Decision’s inclusion of certain kinds of confidential information. Specifically, under Vaccine Rule 18(b), each party has fourteen days within which to request redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, the Decision in its present form will be available. *Id.*

² The Vaccine Program comprises Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (codified as amended at 42 U.S.C. §§ 300aa-10–34 (2012)) (hereinafter “Vaccine Act” or “the Act”). All subsequent references to sections of the Vaccine Act shall be to the pertinent subparagraph of 42 U.S.C. § 300aa.

(“TM”) which resulted in his death. *See* Stipulation ¶ 2, 4, dated July 13, 2021 (ECF No. 60); *see also* Petition.

Respondent denies “that the flu vaccine caused Mr. Stolberg’s TM and death, or any other injury.” *See* Stipulation ¶ 6. Nonetheless, both parties, while maintaining their above-stated positions, agreed in a stipulation dated July 13, 2021 that the issues before them can be settled and that a decision should be entered awarding Petitioner compensation. ECF No. 27.

I have reviewed the file, and based upon that review, I conclude that the parties’ stipulation is reasonable. I therefore adopt it as my decision in awarding damages on the terms set forth therein.

The stipulation awards:

A lump sum of **\$175,000.00** in the form of a check payable to Petitioner, Patricia Stolberg, as personal representative of the estate of Peter Stolberg, decedent.

Stipulation ¶ 8. This award represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

I approve a Vaccine Program award in the requested amounts set forth above to be made to Petitioner. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of the Court is directed to enter judgment herewith.³

IT IS SO ORDERED.

s/ Katherine E. Oler
Katherine E. Oler
Special Master

³ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by jointly filing notice renouncing their right to seek review.

PATRICIA STOLBERG,
as Personal Representative of
the Estate of Peter Stolberg, Decedent,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

The parties hereby stipulate to the following matters:

1. Patricia Stolberg (“petitioner”), as personal representative of the estate of Peter Stolberg, decedent (“Mr. Stolberg”), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the “Vaccine Program”). The petition seeks compensation for injuries allegedly sustained following Mr. Stolberg’s receipt of an influenza (“flu”) vaccine, which vaccine is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a).
2. Mr. Stolberg received a flu vaccine on October 5, 2016.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Mr. Stolberg subsequently suffered the injury transverse myelitis (“TM”), which petitioner alleges was caused-in-fact by Mr. Stolberg’s receipt of the flu vaccine. Petitioner further alleges that Mr. Stolberg died as a result of his TM.
5. Petitioner represents that there has been no prior award or settlement of a civil

action for damages as a result of Mr. Stolberg's alleged vaccine-related injury and death.

6. Respondent denies that the flu vaccine caused Mr. Stolberg's TM and death, or any other injury.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of \$175,000.00 in the form of a check payable to petitioner, Patricia Stolberg, as personal representative of the estate of Peter Stolberg, decedent, which amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act, 42 U.S.C. § 1396

et seq.), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as legal representative of Mr. Stolberg's estate under the laws of the State of Florida. No payment pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as legal representative of Mr. Stolberg's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of Mr. Stolberg at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative of the estate of Mr. Stolberg upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as personal representative of the estate of Mr. Stolberg, and on behalf of the estate and Mr. Stolberg's heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to, or death of, Mr. Stolberg resulting from,

or alleged to have resulted from, the flu vaccine administered to Mr. Stolberg on October 5, 2016, as alleged by petitioner in a petition for vaccine compensation filed on or about November 20, 2017, in the United States Court of Federal Claims as petition No. 17-1815V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation, or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the items of compensation sought, is not grounds to modify or revise this agreement.

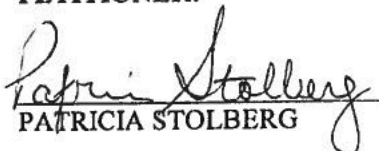
16. This Stipulation shall not be construed as an admission by the United States of America or the Secretary of Health and Human Services that Mr. Stolberg's alleged TM and death, or any other injury, were caused-in-fact by the flu vaccine.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, successors and/or assigns, as personal representative of the estate of Mr. Stolberg.

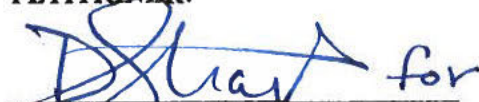
END OF STIPULATION

Respectfully submitted,

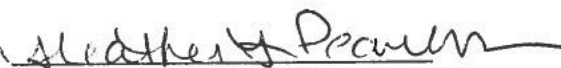
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PATRICIA STOLBERG

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